



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

### TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 080037

Petitioners, Polly and Gregg Ribatt, applied to the Building Commissioner for permission to construct an addition to their garage and second floor of their home at 29 Hilltop Road. The application was denied and an appeal was taken to this Board.

On 2 October 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 20 November 2008, at 7:00 p.m. on the 2<sup>nd</sup> floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 30 October and 6 November 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **GREGG RIBATT**  
Location of Premises: **29 HILLTOP ROAD BRKL**  
Date of Hearing: **11/20/2008**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Main Library, 2<sup>nd</sup>. floor**

A public hearing will be held for a variance and/or special permit from:

**5.09, Design Review, special permit required.**

**5.20, Floor Area Ratio, variance required.**

**5.43, Exceptions to Yard and Setback Regulations, Special Permit Required.**

**5.60, Side Yard Requirements, Variance Required.**

**8.02.2, Pre-existing, Non-conforming Condition, (FAR) Special Permit Required** of the Zoning By-Law to convert the existing basement into habitable floor space to be combined as part of the first floor per plans at **29 HILLTOP ROAD BRKL.**

Said Premise located in a **S-15** (single family) district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Kathryn Ham and Mark Allen. The petitioner, Polly Ribatt, was present as was her architect, Hobart Fairbanks of Fairbanks Design, 225-R Concord Avenue, Cambridge, MA 02138.

Ms. Ribatt described her home as a single-family two-and-a-half story clapboard colonial with a slate roof, built in 1935. It has an attached garage with an interior entrance through a mudroom. The main house contains the living room, family room, dining room, and several bedrooms; the secondary part of the house contains the mudroom, kitchen, and garage on the first floor, and two bedrooms on



the second floor. She said that the property is screened from her neighbors on the garage side with a dense hedge of hemlock trees. The neighborhood is comprised of larger single family homes, and is near, but not in, the Chestnut Hill Historic District. Ms. Ribatt said they are proposing to construct a 119 square foot two-story addition to extend the rear of the garage on the first floor, and the rear bedroom and bathroom on the second floor. The addition will extend 4' beyond the existing rear wall. She said that they are also proposing to raise the height of the roof 4'6" on the secondary portion of the house. The raised roof will accommodate loft space over the second floor bedrooms above the garage, and new skylights and provide more efficient use of the space. The garage gable will be the highest point on the new roofline and will be approximately 27' tall, and will be 13' lower than the apex of the gable on the main section of the house. Issues relating to the poor performance of the existing slate roof are partially driving the addition. Although repeated attempts have been made to repair the roof, because of its complexity, it still leaks posing water damage and mold issues in the home. Ms. Ribatt said she thought she needed relief under the Zoning By-Law Sections governing design review, floor area ratio, setback and alteration of a pre-existing non-conforming structure.

The Chairman asked whether anyone was present who wished to speak in favor of or in opposition to the proposal. No one rose to speak.

Board member Mark Allen asked whether the petitioner had a copy of the original plans of the home so he could determine the amount of additional square footage requested. Mr. Fairbanks responded that he did not have them with him. The Building Commissioner stated that he had reviewed the original plans and was satisfied with the calculations provided by the architect. Mr. Allen also asked about the material that the petitioner planned on using for the new roof, noting the Planning Board's concern. Ms. Ribatt responded that while they would like to use slate, they had not yet

received bids for the project and the selection of roofing material would be based upon performance, aesthetics and cost.

The Chairman asked the Petitioner to specify the counterbalancing amenities to be provided as required by the Zoning By-Law (Section 5.43) in order to receive setback relief. Ms. Ribatt responded that they planned to remove a crabapple tree from the front of the house that was planted too close to the house and has failed to thrive. She explained that they had tentatively planned to plant another crabapple tree to right-rear corner of the lot. There is a hemlock hedge along the right-side lot line from the front to the back of the lot. Although they were looking at planting the apple tree to the right of the garage along the lot line, she said her landscaper thought the hemlocks would provide too much shade and the new tree may not thrive. Ms. Ribatt confirmed that improved landscaping would be the counterbalancing amenity.

Ms. Courtney Starling, planner delivered the Planning Board report.

**Section 5.09.2.j – Design Review:** Any exterior addition for which a special permit is requested pursuant to Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations) requires a special permit subject to the design review standards listed under Section 5.09.4(a-l). All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a) **Preservation of Trees and Landscape:** The proposed additions are not anticipated to disturb the existing landscape or any trees as it only extends an additional four feet into the rear yard.
- b) **Relation of Buildings to Environment:** The proposed additions are not anticipated to cause shadowing on neighboring buildings. The proposed raised roof will remain lower than the roofline on the main section of the house and does not exceed height regulations.
- c) **Relation of Buildings to the Form of the Streetscape and Neighborhood:** The proposed additions are consistent in style with the existing dwelling as well as with neighboring dwellings. The additions are not expected to change the overall character of the existing dwelling.
- d) **Open Space:** The proposal will allow for the entire rear yard to be used as open space by the residents.
- e) **Circulation:** The proposal will retain the existing driveway and is not anticipated to impact circulation.



### Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	.25 100%	.33 132%	.34 136%	Special permit*
Floor Area (s.f.)	3,372	4,487	4,606	

\* Under Section 5.22.3.c, the Board of Appeals may grant a special permit for up to 150% of the permitted gross floor area provided the addition is less than 350 square feet. The applicant is proposing to construct an 119 square foot addition.

### Section 5.43 – Exceptions to Yard and Setback Requirements

### Section 5.60 – Side Yard Requirements

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
East Side Yard Setback (ft.)	15	9.9	9.9	Special Permit*/

\* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has indicated they will provide additional landscaping as a counterbalancing amenity.

### Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure.

Ms. Starling reported that the Planning Board had no objection to the proposal to construct these additions. They are attractively designed and fit well within the character of the existing home and neighborhood. The applicants are proposing to alter the roof in response to repeated unsuccessful attempts to repair the existing roof, and have created a more functional design that will allow for better usage and maintenance of their home. The Board voted to recommend approval of the plans prepared by Hobart Fairbanks dated 8-7-08, and the site plan prepared by James J. Abely. and last dated 8-7-08, subject to the following conditions:

1. **Prior to the issuance of a building permit, final elevations of the additions indicating roof materials shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

2. **Prior to issuance of a building permit, a final landscaping plan that shall serve as a counterbalancing amenity shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
3. **Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that when he received the building permit application a great deal of time was expended determining the floor area and appropriate relief required. Mr. Shepard said the home has been extremely well taken care-of and contributes nicely to the neighborhood. He opined that the plans were professionally prepared. Mr. Shepard said that the Building Department is supportive of the project as well as the conditions recommended by the Planning Board.

During deliberations, Kathryn Ham said she was in favor of the proposal. Mr. Allen asked about the counter-balancing amenities required and said specific language should be provided in the conditions as to the minimum requirements. The Chair agreed and stated that the conditions could be modified accordingly.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements have been satisfied under the following Sections of the Zoning By-Law and that it is desirable to grant a Special Permit in accordance with **Section 5.09.2.j**, design review, **Section 5.22.3.c** floor area ratio, **Section 5.43**, exceptions to yard and setback requirements and **Section 8.02.2**, alteration or extension of a pre-existing, non-conforming structure, of the Zoning By-law and makes the following specific findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.




- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations of the additions indicating roof materials shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan that shall serve as a counterbalancing amenity shall be submitted to the Assistant Director for Regulatory Planning for review and approval. Counterbalancing amenities shall include, as a minimum, replacement of the existing crabapple tree.

Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

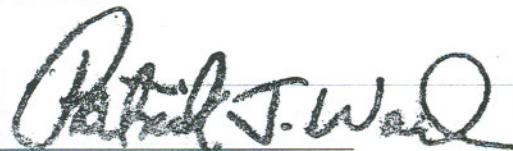
Unanimous Decision of  
The Board of Appeals

  
Jesse Geller, Chairman

Filing Date: December 5, 2008

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

RECEIVED  
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REGISTRARS OF VOTERS

08 DEC -5 AM 8:31